

Cases and Other Materials on International Law (Book Review)

Frederic Rockwell Sanborn

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maintaining our neutral "right" of trade with both sides, by force if necessary, appears to combine the most hazardous elements of both these policies for ends which seem no more substantial (explicitly stated) than a preservation of national "dignity", and (implicitly inherent in the argument) the protection of the traders' profits.

PHILLIPS BRADLEY.*

CASES AND OTHER MATERIALS ON INTERNATIONAL LAW. By Manley O. Hudson. St. Paul: West Publishing Co., 1936, pp. xi, 1440.

CASES AND OTHER MATERIALS ON INTERNATIONAL LAW. By Manley O. Hudson. St. Paul: West Publishing Co., 1937, pp. xxxix, 662.

The quantity which any German scholar is impelled to produce was the subject of comment long before my time. Professor Hudson, I suspect, was trained in the German school of scholarship: witness his second edition, complete and unabridged. Nevertheless the result is not entirely due to notions about what constitutes good scholarship. It is due chiefly, I believe, to a school of thought, for the most part tacit and subconscious, about what constitutes good material for a course in International Law. That subject, like so many others, has a practical and a theoretical side. Which shall be emphasized?

On the practical side are the cases and the statutes and the decisions. Relatively they are few, and any man who knows his subject can state nearly every one during the last two centuries by heart, from *Barbuit's Case* (1737) to *Bank of Ethiopia v. National Bank of Egypt* (1937). It is, therefore, not a task of great difficulty to compile a good casebook—I mean a *casebook*—and there are those to whom an easy task is repellent. Perhaps Professor Hudson is such a one.

On the theoretical side are the new treaties. No one, inside the field of International Law or outside of it, knows just how many of them there are. The treaties registered with the League of Nations are duly published, and the published volumes run into scores. Many of these treaties are never ratified; others are not ratified for many years; still others, like the Kellogg-Briand Treaty for the Renunciation of War, have been ratified by as many as sixty-three nations. Apart from the pedagogical fact that the text of a treaty is extremely dull teaching material, have such treaties any value to the student of International Law? These paper agreements, some of which have never come into effect, others of which have yet to face the bitter test of use, still others of which, like the Kellogg-Briand Treaty, have failed so dismally as to be illusory—do they really and reliably represent to the trusting student International Law as it *is*, or International Law as some idealistic professor hopes it will be in the days to come when the Golden Age returns to earth?

I often wonder, myself. Professor Hudson would not, does not, share these doubts of mine. In his index are to be found well over one hundred and

* Professor of Political Sciences, Amherst College.

fifty references to treaties which are quoted in part or entire (I speak of the unabridged edition), including—I quote his footnote—"official projects of such instruments".

It depends, no doubt, on the point of view. To me one decided case in which a rule of International Law has been applied, *i.e.*, has had *force*, is worth a bushel of "official projects" which, like the venerable but pertinent tale concerning the timetables of any railroad, represent the expression of an aspiration but not a statement of fact.

Yet, with treaties or without treaties, the tide has turned! I have complained elsewhere¹ of the increasing bulk of International Law casebooks (a bulk which could be diminished substantially by the judicious omission of a few dozen treaties), and apparently it is no longer *vox clamantis in deserto*. Professor Hudson's first edition ran to 1573 pages; the second is 1480 pages, and the shorter selection but 661. *Aurea condet saecula!* In quantity, in bulk, the shorter selection approaches the right dimensions.

Like its more adipose brother, the shorter selection is prefaced by nineteen pages in which Professor Hudson indicates "the materials which are more essential to a working library of international law".² These nineteen pages might well have been devoted, instead, to some of the cases crowded out of the unabridged edition. For example, under "Nationality", the topic "National Character of Business Associations" has been entirely omitted, although the subject is of real importance to practicing lawyers. Chapter 10, "International Regulation of Commerce and Industry", is of little practical value and could have been spared easily in order to make room for more of the cases. Chapter 9 has been cut down to deal only with extradition, a wise choice which might well have been made in the larger book. The pruning knife has been used almost brutally on the number of cases to be found in the shorter selection, but the casualty list amongst the treaties is almost negligible, so that the lack of balance between the two is augmented.

One defect in form which existed in the first edition has not yet been wholly corrected, although perhaps only the practicing lawyer would notice it. For example, our statute on extradition is given,³ and the primary citation is to the old Revised Statutes of 1878, despite the fact that since 1925 the correct reference has been to the United States Code.⁴

The shorter edition, therefore, leaves something to be desired, but, bearing in mind Professor Hudson's well deserved reputation in his field, it is not to be doubted that there will be subsequent editions which will offer an opportunity for changes.

The longer edition, all differences of opinion aside, possesses great merit. For some, it will be exactly what is required; for others, it will be as a quarry

¹ (1936) 5 BROOKLYN L. REV. 477.

² HUDSON, CASES AND OTHER MATERIALS ON INTERNATIONAL LAW (2d ed. 1937) p. xxi.

³ At p. 947 in the longer edition; at p. 410 in the shorter edition.

⁴ Professor Hudson does give secondary citations to a commercial annotation of the Code, and since that work employs the same title and section numbers as the official edition, the correct official citation can easily be found.

whence the chosen stones may be selected. And candor demands that I confess that good can be found, even in a mass of treaties.⁵

FREDERIC ROCKWELL SANBORN.*

NATIONALITY OF A MERCHANT VESSEL. By Robert Rienow. New York: Columbia University Press, 1937, pp. i, 247.

A reader of this book certainly will be impressed with the fact that a ship is in a class all by itself due to the tradition of the sea, the special laws and the regulations which apply to it. He will likewise be impressed that the author devoted countless hours in preparation of a subject which, of necessity, required that an exhaustive study be made not only of the laws of this country but of the various maritime countries. This is reflected by the many supporting footnotes and references. A reference to these cases, statutes, official reports, records, opinions, documents and regulations, not only of this country but of the other maritime nations and also to books and articles appears in an exhaustive bibliography.

The author has chosen a subject with which the average attorney is not familiar. Those actively engaged in the practice of admiralty law will enjoy this scholarly presentation because it touches a branch of the admiralty law with which few come in contact.

The work contains ten chapters in six of which the words "nationality" and "national" are expressed. These chapters deal with the "significance of nationality", "the nationality of a ship", "national build", "national crew", "national ownership" and the concluding chapter "the test of nationality". The other four chapters deal with "enemy ownership", "the flag", "documents" and "criminal jurisdiction and nationality".

It is clearly shown that under international law a ship has a "nationality", which fact has long been recognized by the various maritime countries. Formerly these countries laid stress on whether a ship was constructed in its territory. Where it was constructed now plays no part in the "nationality" of the ship. The chapter on "national crew" deals with the position taken by the respective countries on this subject. Each country does as it sees fit. The book sets forth the various countries requiring and those not requiring that the crew be nationals. Those countries in the former class are in the minority. The United States requires that a proportion of the crew be nationals. The countries with this requirement have about one-third of the world tonnage.

⁵ When the Supreme Court of Bermuda, sitting in Admiralty, decided the *Cristobal Colon* case last autumn, it appears from the opinion of the Acting Chief Justice that a copy of the Brussels Convention of April 10, 1926, concerning the immunity of state-owned vessels, could not be found in the Islands: *The Royal Gazette and Colonist Daily*, Oct. 19, 1937, p. 10. Although this is one of the treaties that never went into effect (HUDSON, *op. cit. supra*, p. 537, note 20), I have already taken steps to supply Bermuda's deficiency by sending a copy of Professor Hudson's longer selection.

* Professor of Law, Brooklyn Law School.